



Bill Combs, Treasurer
21st Century Democrats
1731 Connecticut Avenue, NW
2nd Floor
Washington, DC 20009

Dear Mr. Combs:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that 21st Century Democrats and you, in your official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act") and its underlying regulations. On February 26, 2009, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 432(c) and (d), 434(b)(1)-(5), and 434(b)(8); and 11 C.F.R. §§ 102.9(a)(1), (2), and (4), 104.3(d), and 104.11. Enclosed is the Final Audit Report of the Committee that serves as the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Final Audit Report of 21st Century Democrats
Procedures
Designation of Counsel Form

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Report of the Audit Division on the 21st Century Democrats

January 1, 2003 – December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

21st Century Democrats (21CD) is a non-connected committee. 21CD qualified for multi-candidate status on June 20, 1990 and is headquartered in Washington, DC. For more information, see chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**

○ Contributions from Individuals	\$ 5,030,878
○ Contributions from Other Political Committees	73,055
○ Offsets to Operating Expenditures	14,813
○ Other Federal Receipts	56,384
○ Transfers from Non-federal Funds	1,777,726
○ Total Receipts	\$ 6,952,856
- **Disbursements**

○ Operating Expenditures	\$ 6,726,120
○ Contributions to Federal Candidates/Committees	40,982
○ Refunds of Contributions	11,982
○ Other Federal Disbursements	52,128
○ Total Disbursements	\$ 6,831,212

Findings and Recommendations (p. 3)

- Documentation for Receipts (Finding 1)
- Reporting of Debts and Obligations (Finding 2)
- Disclosure of Statement of Organization (Finding 3)
- Misstatement of Financial Activity (Finding 4)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of 21st Century Democrats (21CD), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The disclosure of expenses allocated between federal and non-federal accounts.
6. The consistency between reported figures and bank records.
7. The completeness of records.
8. Other committee operations necessary to the review.

Limitations

21CD did not comply with the recordkeeping requirement, 11 CFR §102.9(a)(4), which requires committees to maintain a copy of contributor checks in excess of \$50 (see Finding 1). The lack of these records limited the Audit staff's testing of prohibited contributions, the timeliness of deposits, the accuracy of election designations and contributor attributions, and the adequacy of disclosure information such as contributor name and address. It also limited the Audit staff in identifying and explaining differences between reported activity and bank activity.

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Part II

Overview of Committee

Committee Organization

Important Dates	21st Century Democrats
• Date of Registration	July 28, 1988
• Audit Coverage	January 1, 2003 – December 31, 2004
Headquarters	Washington, District of Columbia
Bank Information	
• Bank Depositories	Four
• Bank Accounts	Two Federal & Nine Non-federal checking accounts
Treasurer	
• Treasurer When Audit Was Conducted	Bill Combs
• Treasurer During Period Covered by Audit	Michael Lux
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2003	\$ 22,788
o Contributions from Individuals	5,030,878
o Contributions from Other Political Committees	73,055
o Offsets to Operating Expenditures	14,813
o Other Federal Receipts	56,384
o Transfers from Non-federal Funds	1,777,726
Total Receipts	\$ 6,952,856
o Operating Expenditures	6,726,120
o Contributions to Federal Candidates/Committees	40,982
o Refunds of Contributions	11,982
o Other Federal Disbursements	52,128
Total Disbursements	\$ 6,831,212
Cash on hand @ December 31, 2004	\$ 144,432

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Part III

Summaries

Findings and Recommendations

Finding 1. Documentation for Receipts

21CD did not maintain adequate documentation for its contributions from individuals in excess of \$50. In an attempt to locate the necessary records, 21CD authorized the Audit staff to obtain contribution records directly from its bank. Through its bank, the Audit staff was able to obtain some additional contribution records. Further, in its response to the interim audit report, 21CD provided documentation for additional contributions. The required records still have not been provided for 37.5% of contributions from individuals. (For more detail, see p.4)

Finding 2. Reporting of Debts and Obligations

21CD did not report most of its debts and obligations on Schedules D (Debts and Obligations) during the audit period. From just one vendor, the Audit staff identified debts and obligations totaling \$638,361 that were not reported. In its response to the interim audit report, 21CD agreed with the Audit staff and is reviewing its vendor records in preparation for amending its disclosure reports. 21CD filed amended reports approximately four months and, again, eight months after the final audit report was submitted to the Commission for approval which materially corrected the reporting errors noted above. (For more detail, see p.6)

Finding 3. Disclosure of Statement of Organization

21CD did not disclose bank depositories on its amended Statement of Organization filed during the audit period. 21CD amended its Statement of Organization to include its most current bank depositories. No further comments were included in 21CD's response to the interim audit report. (For more detail, see p.7)

Finding 4. Misstatement of Financial Activity

A comparison of 21CD's reported figures to its bank records revealed that receipts for calendar year 2004 were misstated. 21CD had both receipts which were not reported and receipts which were reported in error. This resulted in a net understatement of receipts totaling \$32,308. In its response to the interim audit report, 21CD accepted the Audit staff's recommendation and agreed to amend its disclosure reports to correct the misstatement. 21CD filed amended reports approximately four months and, again, eight months after the final audit report was submitted to the Commission for approval which materially corrected the misstatement noted above. (For more detail, see p.8)

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Part IV

Findings and Recommendations

Finding 1. Documentation for Receipts

Summary

21CD did not maintain adequate documentation for its contributions from individuals in excess of \$50. In an attempt to locate the necessary records, 21CD authorized the Audit staff to obtain contribution records directly from its bank. Through its bank, the Audit staff was able to obtain some additional contribution records. Further, in its response to the interim audit report, 21CD provided documentation for additional contributions. The required records still have not been provided for 37.5% of contributions from individuals.

Legal Standard

A. Recordkeeping. The treasurer of a political committee shall keep an account of:

- All contributions received by or on behalf of such political committee;
 - The name and address of any person who makes any contribution in excess of \$50, together with the date and amount of such contribution by any person. In addition, a full-size photocopy or digital image of each check or written instrument must be maintained;
 - The identification of any person who makes a contribution or contributions aggregating more than \$200 during a calendar year, together with the date and amount of any such contribution; and
 - The identification of any political committee which makes a contribution, together with the date and amount of any such contribution.
- 2 U.S.C. §432(c) and 11 CFR §102.9(a)(1), (2), (3) and (4).

B. Preservation of Records. The treasurer shall preserve all records required to be kept for 3 years after the report is filed. 2 U.S.C. §432(d).

Facts and Analysis

During the inventory of 21CD records prior to the start of fieldwork, it became apparent to the Audit staff that a majority of contributor check copies and documentation for credit card contributions had not been maintained by 21CD. The receipts database provided by 21CD contained more than 150,000 contributions from individuals, yet only 1 ½ boxes of contribution records were made available to the Audit staff. Most records maintained appeared to be contributions greater than or equal to \$100. It should be noted that while most contributions to 21CD were in amounts less than \$50, its receipts database indicated that more than 13,700 contributions were greater than \$50. A sample review of contributions from individuals indicated that 90% of contributors check copies were not maintained for contributions greater than \$50³.

³ 21CD's receipts database did not distinguish credit card contributions, and, because nearly all of its receipts were from deposits of contribution checks, the Audit staff initially treated all sample items as contributions by check.

The Audit staff discussed this matter with 21CD representatives during the audit and at the exit conference. 21CD representatives stated that most contribution records had been destroyed by the vendor responsible for entering all contributions into its main database, Data Direct, Inc. They stated that the only copies maintained were of contributions \$100 or larger which were received directly by the committee. 21CD was unable to provide a vendor contract for Data Direct, Inc. to establish what records were supposed to be kept.

Subsequently, 21CD authorized the Audit staff to contact its bank in an attempt to obtain copies of the missing contributor checks for the contributions included in the sample. The bank was only able to locate and provide check copies for 58% of those contributions³. The bank did not indicate that its search had determined that any of these items were contributions made by credit card (see footnote 3, below). Bank representatives, using the provided deposit date⁴, indicated they visually scanned microfilm copies of deposits in an attempt to locate these items. Some of these deposits contained hundreds of checks making the review difficult. In addition, bank representatives stated that no deposits were made on some dates indicated in 21CD's contribution database. This suggests that dates were not consistently or accurately recorded by 21CD.

A list of the sample contributions which were not located by the bank was provided to 21CD.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that 21CD further attempt to locate the missing contributor records by contacting its bank and/or credit card processing companies and having all copies produced in the search sent directly to the Audit staff. Also, it was recommended that 21CD implement practices to ensure the maintenance of receipt documentation and provide any comments it may yet have relative to this matter.

In its response to the interim audit report, 21CD was able to determine that some of the missing contribution records were for contributions made by credit card. 21CD was also able to trace some of these contributions to deposits. However, 21CD was unable to provide any credit card processing records, solicitation devices, etc. for these contributions. As such, 21CD failed to provide the required documentation for its credit card contributions.

For contributions made by check, 21CD provided some supporting check copies. However, the Audit staff had already obtained this documentation from 21CD's bank for nearly all of those contributions. In summary, the required check copies were not provided for 12% of contributions in the sample that appear to have been made by check.

³ Although the available documentation provided no indication that any of the sample contributions were made by credit card, some sample items may be credit card contributions which would explain why the bank could not locate contributor check copies. The Audit staff estimates that approximately 14% of all contributions were made by credit card.

⁴ 21CD's contribution records did not afford the Audit staff an opportunity to verify that the date utilized for reporting was the deposit date.

However, over all the required documentation was not provided for 37.5% of contributions in excess of \$50.

In addition, 21CD's response outlined recently implemented practices to ensure the maintenance of receipt documentation.

Finding 2. Reporting of Debts and Obligations

Summary

21CD did not report most of its debts and obligations on Schedules D (Debts and Obligations) during the audit period. From just one vendor, the Audit staff identified debts and obligations totaling \$638,361 that were not reported. In its response to the interim audit report, 21CD agreed with the Audit staff and is reviewing its vendors in preparation of amending its disclosure reports. 21CD filed amended reports approximately four months and, again, eight months after the final audit report was submitted to the Commission for approval which materially corrected the reporting errors noted above.

Legal Standard

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C. §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).
- B. Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).
- C. Itemizing Debts and Obligations.**
 - A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
 - A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

During a review of 21CD's operating expenditures, the Audit staff became aware that very limited debts and obligations had been reported during the audit period. The review indicated that debts should have been reported for many vendors, such as OMP, Shenda, Strategic Marketing and Mailing, Data Direct, and Integral Resources. Of these vendors, 21CD only reported debts to Integral Resources. A further review of one of these vendors, OMP, indicated that debts and obligations totaling \$638,361 should have been reported during the audit period.

The Audit staff discussed this matter with 21CD representatives at the Exit Conference and provided them with a schedule of the OMP debts noted above. They stated that the

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debt reporting issues stem from their monthly reporting practice, and they added that they would review this matter.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that 21CD amend its reports to include debts of \$638,361 to OMP. In addition, it was recommended that 21CD review other vendors for possible reportable debts and obligations, and if any such debts were determined, these should also be included in the amended reports. In its response to the interim audit report, 21CD accepted the Audit staff's recommendation and agreed to amend its reports to include the debts to OMP of \$638,361 as well as other vendors to which debts were owed.

21CD filed amended reports approximately four months and, again, eight months after the final audit report was submitted to the Commission for approval which materially corrected the reporting errors noted above.

Finding 3. Disclosure of Statement of Organization

Summary

21CD did not disclose bank depositories on its amended Statement of Organization filed during the audit period. 21CD amended its Statement of Organization to include its most current bank depositories. No further comments were included in 21CD's response to the interim audit report.

Legal Standard

Registration. A non-connected committee must file a Statement of Organization no later than 10 days after becoming a political committee. 2 U.S.C. §433(a).

Contents. The Statement of Organization shall include a listing of all banks, safety deposit boxes, or other depositories used by the committee. 2 U.S.C. §433(b).

Facts and Analysis

On March 18, 2003, 21CD filed an amended Statement of Organization (Statement) with the Commission. In the Statement, 21CD did not list any banks or other depositories. No subsequent amendments had been filed.

During audit fieldwork, the Audit staff informed 21CD representatives of this matter. At the Exit Conference, 21CD representatives presented the Audit staff with an amended Statement that disclosed all depositories utilized by 21CD. This Statement was filed with the Commission on February 26, 2007.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that 21CD provide any further comments relative to this matter. None were included in its response.

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Finding 4. Misstatement of Financial Activity

Summary

A comparison of 21CD's reported figures to its bank records revealed that receipts for calendar year 2004 were misstated. 21CD had both receipts which were not reported and receipts which were reported in error. This resulted in a net understatement of receipts totaling \$32,308. In its response to the interim audit report, 21CD accepted the Audit staff's recommendation and agreed to amend its disclosure reports to correct the misstatement. 21CD filed amended reports approximately four months and, again, eight months after the final audit report was submitted to the Commission for approval which materially corrected the misstatement noted above.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts), Schedule B (Itemized Disbursements) or Schedule H-4 (Joint Federal/Non-federal Activity Schedule). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

Facts and Analysis

The Audit staff reconciled 21CD's reported activity to bank records for calendar year 2004. The reconciliation revealed that reported receipts were understated by \$32,308.

The net understatement of receipts resulted from the following:

• Transfers from Non-federal Accounts not reported	\$179,761
• Erroneously reported Transfers from Non-federal Accounts	(106,448)
• Other Political Committee Contributions not reported	15,805
• Unexplained Difference	<u>(56,810)⁵</u>
Total Net Understatement of Receipts	<u>\$ 32,308</u>

The Audit staff discussed this matter with 21CD representatives at the exit conference and provided a schedule outlining the misstatement. 21CD representatives stated they would further review this matter and respond appropriately.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that 21CD amend its reports to correct the misstatement noted above. In its response to the interim audit report, 21CD accepted the Audit staff's

⁵ It should be noted that this Unexplained Difference is the result of 21CD's failure to maintain adequate receipt and deposit records (see Limitations, p.1 and Finding 1, p.4). With 150,000+ contributions and very limited receipt records, any differences were extremely difficult and time consuming to explain. 21CD acknowledged its reporting and recordkeeping shortcomings and has taken steps to comply with these requirements in the future.

recommendation and agreed to amend its reports to correct the misstatement. To date, no amended reports have been filed.

21CD filed amended reports approximately four months and, again, eight months after the final audit report was submitted to the Commission for approval which materially corrected the misstatement noted above.

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